

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-185585

DATE: April 22, 1976

MATTER OF: Technassociates, Incorporated

99031

## DIGEST:

1. Where RFP for fixed-price contract specifies estimated level of effort with certain labor mix and permits deviations from estimates with sufficient justification, award to offeror who proposed deviations does not prejudice offeror that did not offer deviations since offerors were apprised of possibility.
2. Acceptance of offer that deviated from estimated level of effort and labor mix specified in RFP (which permitted deviations) was not tantamount to change in specification requiring amendment to RFP to insure equality of competition.
3. When evaluation is based on total estimated level of effort for two phases of services and Phase II level of effort derives from Phase I, explicit permission to deviate from Phase I level of effort reasonably contemplates permission to deviate from Phase II level of effort and total level of effort.
4. Where RFP permits deviation from estimated levels of effort, agency should have evaluated best and final offer of awardee deviating from estimate in RFP as submitted, rather than unilaterally convert lower prices in best and final offer to higher prices reflecting estimated levels in RFP. Assumption that deviating personnel rates would be same for different labor mix is unwarranted. This had no effect on award made because the evaluation prejudiced only awardee, best and final offer was basis for award, and in either case, awardee offered the lowest price.

Technassociates, Incorporated (Technassociates), protests the award of contract No. DSAH00-76-C-0290 by the Defense Supply Agency (DSA) to Information and Communication Applications, Inc. (ICA), for two phases of services: formulation of a redesign and conversion concept, along with the development of a system implementation plan, for the Defense Documentation Center's automatic data processing system (Phase I); and execution of the system implementation plan (Phase II).

The firm fixed-price contract was awarded pursuant to request for proposals (RFP) DSAH00-75-R-0070. The following provisions of the RFP are relevant to the consideration of protest. Standard Form 33A at paragraphs 2(d) and 10(a), respectively, provides:

"Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

\* \* \* \* \*

"The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

Section "F," "Statement of Work," paragraph 7, "Period of Performance," sets forth the man-months necessary to perform each phase:

"\* \* \* Phase I is estimated to require a 3 man-level or 17 man-months of contractual effort (1 Project Leader, 7 man-months, 1 Senior Systems Analyst, 7 man-months and 1 Senior Systems Analyst, 3 man-months). \* \* \* The bidder must provide details concerning the deviation of the estimated level of effort.

"Phase II is estimated to require a three man-level or 27 man-months of contractual effort (1 Project Leader, 9 man-months and 2 Senior Systems Analysts, 9 man-months each). Phase II Tasks will be negotiated with the Phase I contractor based on the findings and determinations of Phase I. The duration and magnitude of Phase II cannot be specified until the completion of Phase I. Evaluation of Phase I and II will be predicated on 44 man-months of effort (1 Project Leader, 16 man-months and 2 Senior Systems Analysts, 28 man-months)."

On the matter of evaluation of proposals, section "D," states:

"The contract resulting from this solicitation will include Phase I (Tasks A & B) and Phase II (Task C). The specific Phase II Tasks (i.e. sub-tasks of Task C) are dependent upon the results of Phase I and cannot be definitized at this time. Therefore, the Proposals will be evaluated based on Phase I Tasks and an estimate for Phase II. For evaluation purposes, it is estimated that it will take 17 contractual man-months for Phase I and 27 contractual man-months for Phase II. However, the contract will be awarded for Phase I only with an option for Phase II. Firm fixed prices for Phase II (1 Project Officer, 9 man-months and 2 Senior Systems Analysts, 9 man-months each) shall be included in the price proposal and will be used as a basis for the total evaluation of this requirement which includes the option for performance of Phase II."

Four evaluation factors were outlined which all bore equal weight. "The cost of performing Phase I and Phase II effort" was to be evaluated.

ICA's best and final offer, which is the basis of the contract, proposed changes to Phases I and II labor mixes stated in the RFP, which in turn caused a change to the overall labor mix. ICA's proposed manning for Phase I included 1 project leader for 3 man-months and 2 senior systems analysts for 14 man-months. For Phase II, ICA proposed 1 project leader for 4 man-months and 3 senior systems analysts for 23 man-months. There was no change to the total number of man-months (44) stated in the RFP.

It is Technassociates' position that DSA's acceptance of these deviations indicated a substantial change in the Government's needs, which required an amendment to the RFP, pursuant to Armed Services Procurement Regulation §§ 3-505 and 805.4 (1975 ed.), to insure that all firms competed equally for the procurement. Technassociates also maintains that section F(7), quoted above, permitting deviations from the estimated Phase I labor mix, applied exclusively to Phase I. Therefore, the RFP did not permit Phase II labor mix deviations because to do so in light of the indefiniteness of the scope of Phase II would undermine

any basis of comparative evaluation of proposals for Phase II. This reasoning is also applied to the total labor mix.

Technassociates stresses the significance of the labor mix because the deviations permitted ICA to reduce its initial offer of \$206,339, to \$149,260 in the best and final offer, a decrease of approximately 27.6 percent. Technassociates points to the mandatory personnel qualifications in section "E," as indicative of the importance of the labor mix. Finally, Technassociates states that a question raised by DSA in a letter concerning clarification of Technassociates' proposal concerning whether its proposed project leader would act as project leader full time implied that this was a desirable or required approach. Based on the foregoing, Technassociates requests that the contract be terminated and awarded to it as the lowest priced, technically acceptable offer.

In a report to our Office, DSA points out that the RFP states that the labor mix is only an estimate. Since evaluation was predicated on Phase I and II, and the extent of Phase II is unknown, DSA concludes that the labor mix "\* \* \*" is solely for evaluation purposes, should only be used as an estimate of the effort required, and recognizes that each technical proposal was unique and that the proposed labor mix would vary according to the technical approach."

Concerning Technassociates' contention that no common evaluation base existed, DSA responds that the price evaluation was based upon the above-quoted RFP provisions (44 man-months of effort consisting of 1 project leader for 16 man-months and 2 senior systems analysts for 28 man-months) and resulted in ICA being evaluated lowest at \$158,440, as opposed to Technassociates' at \$176,280. (The obvious discrepancy between the ICA price evaluated by DSA and the ICA best and final offer price will be discussed below.)

We believe that the Technassociates interpretation of section F(7) permitting deviations from the estimated level of effort leads to an unreasonable result. Section "D," quoted above, bases evaluation upon consideration of both Phase I and Phase II estimates. The clear permission to deviate from the Phase I level of effort necessarily contemplates deviations from the total level of effort encompassed by the two phases when Phase I deviations are proposed. Similarly, we believe that deviations from Phase II were also reasonably, although not explicitly, contemplated. Since the Phase II level of effort must derive from Phase I, any deviation in Phase I would, as a foreseeable consequence, result in a deviation in Phase II, as long as justified to the contracting officer. Further, we agree with the following DSA position on the matter:

"TI's contention has the effect of allowing the parties to negotiate a labor mix for a known effort (Phase I), but binding them to a stated labor mix for Phase II requirements before they have been definitized. Thus, TI's second contention is also inconsistent with the terms of the solicitation \* \* \*."

Therefore, we conclude that offerors were or should have been on notice that they could propose deviations from the estimated level of effort.

We have rejected arguments similar to Technassociates' that to permit deviations from a stated estimated level of effort requires amendment of the RFP to insure equality of competition. In ABC Management Services, Inc., et al., 53 Comp. Gen. 656 (1974), 74-1 CPD 125, and 53 Comp. Gen. 198 (1973), the low offeror for mess attendant services deviated from the manning levels estimated in the RFP. As here, such deviation was permissible if justified to the contracting officer. We specifically held that a proposed manning level below that estimated by the Government is not a departure from the RFP since such action was reasonably contemplated by the solicitation. No competitive prejudice existed because all offerors had the same opportunity to deviate and were aware of all elements upon which their proposals would be evaluated.

Moreover, the evaluation procedure set forth in the RFP here accords with our comments in Teledyne Lewisburg Oklahoma Aerotronics, Inc., B-183704, October 10, 1975, 75-2 CPD 228:

"Under a fixed-price contract, however, the contractor is responsible for performing the contract at the contract price, utilizing whatever number of man-hours is necessary to adequately perform that contract. While we recognized that an agency may rely on its own estimates of the manning levels necessary for satisfactory contract performance when negotiating a fixed-price contract, see 49 Comp. Gen. 625 (1970), we believe that the agency should determine in such cases whether a proposal offering less than the agency's estimate is nonetheless acceptable despite the

deviation. In this regard, it must be recognized that estimates are no more than informed guesses, frequently based on an agency's experience with its previous suppliers. It may well be that in some instances the estimates have little or no applicability to certain other companies, either because of the agency's limited experience base or because of some unusual aspect of those other companies. In such instances, any absolute reliance on estimates could have the effect of arbitrarily and unfairly penalizing an innovative or unusually efficient firm and depriving the Government of the benefits available from such a firm. \* \* \*

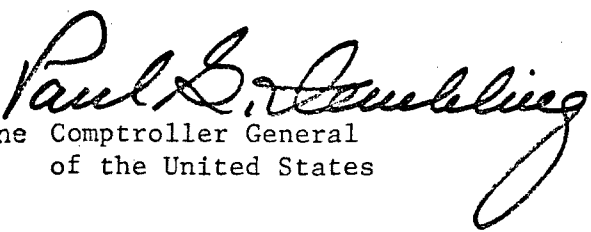
"In situations where the agency estimate is indicated in the solicitation, we think it would be reasonable for the agency to require offerors to justify in their proposals any substantial deviation from the estimate. See 53 Comp. Gen. 198 (1973); 53 id. 388 (1973); ABC Management Services, Inc., et al., 53 Comp. Gen. 656 (1974); Bell Aerospace Company; Computer Sciences Corp., 54 Comp. Gen. 352 (1974). \* \* \* Ideally, when a fixed-price contract is to be awarded, the offeror should be told that its proposal deviates substantially from the Government estimate and should be asked to justify its lower estimate. However, any reasonable method used by the procuring agency to put the offeror on notice of the nature of the discrepancy would not be subject to objection by this Office."

Regarding Technassociates' interpretation of the question raised in the letter, we do not believe that DSA misled Technassociates into assuming the rigidity of the labor mix by inquiring into whether the proposed project leader would act in that capacity on a "full time" basis. The inquiry could simply have been to ascertain whether the project leader would be devoting his full time to this project, or simply questioning whether a permissible deviation was being proposed. In our view, DSA's question was a reasonable one which should not have misled Technassociates.

Finally, the Technassociates proposal for the total level of effort stated in the RFP was \$176,290 (Phase I - \$71,811, Phase II - \$104,479). DSA evaluated ICA's price at \$158,440 based on the estimated labor mix in section F(7) of the RFP, even though the best and final offer set forth monthly rates for a labor mix deviating from that estimated in section F(7). DSA arrived at the evaluated price by unilaterally converting from the monthly labor rates in ICA's best and final offer, which were based upon a labor mix other than that set forth in the RFP, to the labor mix stated in the RFP.

We question the propriety of evaluating an offer on a basis other than that proposed. The method employed was founded on the unwarranted assumption that the ICA monthly rates would have been the same if applied to the labor mix in the RFP. Cf. Dyneteria, Inc., 55 Comp. Gen. 97 (1975), 75-2 CPD 36. The evaluation conversion, in our view, was unnecessary. If, as here, an RFP clearly provides for supported deviations from estimated manning levels, the Government should evaluate the proposal on the basis of the supported deviations at whatever prices result therefrom. Since the evaluation of ICA's prices at an amount in excess of that actually proposed prejudiced only ICA, the evaluation impropriety had no effect on the award made. This is also so because the contract was on the basis of ICA's actual best and final offer. In either case, ICA offered the lowest price.

For the foregoing reasons, the protest is denied.

  
For the Comptroller General  
of the United States